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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/776,721 | 02/11/2004 | Thomas A. Osborne | 8627-451 | 2837 |

7590 06/06/2007
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| EXAMINER |
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THALER, MICHAEL H

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| ART UNIT | PAPER NUMBER |
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3731

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| MAIL DATE | DELIVERY MODE |
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06/06/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/776,721

Applicant(s)

OSBORNE, THOMAS A.

Examiner

Michael Thaler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-38 and 40-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>5/17/04, 10/29/04</u> . | 6) <input type="checkbox"/> Other: _____ |

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Claims 3 and 39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on May 21, 2007.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 4, 6-8, 10, 12, 14, 17-22, 24-26, 28, 30, 32, 35-38, 40, 42-44, 46, 48, 50 and 53-55 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ravenscroft et al. (6,258,026). Ravenscroft et al. disclose primary struts 26, each primary strut comprising a member 26 (which is curved where it is bent

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as it projects outside of hub 12 and at shoulder 30) terminating at anchoring hook 28, secondary struts 18 connected to the primary struts 26 (where they are welded together within hub 12 as indicated in col. 4, lines 34-38) and extending therefrom. Alternatively, it would have been obvious that each primary strut 26 is curved where it is bent. As to claim 2, there are two secondary struts 18 on opposite sides of a primary strut 26 due to the alternating arrangement (in the circumferential direction) of the primary struts 26 and secondary struts 18 described in col. 5, lines 26-32.

Claims 11, 13, 15, 16, 29, 31, 33, 34, 47, 49, 51 and 52 rejected under 35 U.S.C. 103(a) as being unpatentable over Ravenscroft et al. (6,258,026). Ravenscroft et al. fail to disclose the specific dimensions. However, it is old and well known to dimension blood filters as claimed in order to obtain the advantage of enabling them to fit inside small blood vessels. It would have been obvious to so dimension the Ravenscroft et al. filter so that it too would have this advantage.

Claims 1, 2, 4-38 and 40-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ravenscroft et al. (6,258,026) in view of Walak et al. (6,540,767). Assuming *arguendo* that the Ravenscroft et al. primary struts 26 are not considered to be

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curved, Walak et al., in figure 15 teach that the struts of a filter should be gently curved apparently in order to obtain the advantage of more smoothly conforming to the walls of the blood vessel (due to the gradual nature of their bends). It would have been obvious to curve the Ravenscroft et al. primary struts 26 so that it too would have this advantage. As to claim 9, for example, Ravenscroft et al. fail to disclose a retrieval hook. However, Walak et al. teach that a retrieval hook 64 should be included on the hub of a filter apparently in order to obtain the advantage facilitating easy retrieval of the filter. It would have been obvious to include a retrieval hook on the Ravenscroft et al. filter so that it too would have this advantage.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571) 272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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A handwritten signature in black ink, appearing to read "Michael Thaler".

MICHAEL THALER
PRIMARY EXAMINER
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